UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX

ST. MORITZ SECURITY SERVICES, INC.[1]

Employer

and

NATIONAL UNION OF SECURITY PROFESSIONALS

Petitioner

Cases 6-RC-12281 and 6-RC-12285

REGIONAL DIRECTOR'S DECISION AND ORDER

The Employer, St. Moritz Security Services, Inc., operates a business providing security guards on a contract basis to third parties at various locations, including Gateway Center Buildings 1, 2, 3 and 4 in Pittsburgh, Pennsylvania, where it employs approximately 35 employees. The Petitioner, National Union of Security Professionals, filed petitions with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit, as amended at the hearing, of security guards at Gateway Center Buildings 1, 2, 3 and 4. A hearing officer of the Board held a hearing, during which the International Union, Security Police Fire Professionals of America (SPFPA),[2] which is the incumbent representative of the petitioned-for employees, intervened. Thereafter, all parties filed timely briefs with me.

[1] The Employer's name appears as amended at the hearing.

[2] The name of the Intervenor appears as named on the Certification of Representative issued on July 26, 2000, in Case 6-RC-11835.

As evidenced at the hearing and in the briefs, the parties disagree on whether an agreement entered into between the Intervenor and the Employer is a contract bar requiring dismissal of the petitions. Specifically, the question of contract bar raises two subsidiary issues:

1) whether the Intervenor's Local Union Vice President was authorized to sign a contract on behalf of the Intervenor's International Union; and

2) whether the ratification vote satisfied the contractual condition precedent of ratification.

The Petitioner first contends, contrary to the Employer and the Intervenor, that the agreement between the Intervenor and the Employer was not signed by the Intervenor's International Union, which was the certified representative and the named party in the contract. In particular, the Petitioner contends the Intervenor's Local Union Vice President was not authorized to sign the agreement on behalf of the Intervenor's International Union. On this basis, the Petitioner contends the agreement does not bar a rival petition.

The Petitioner next contends, contrary to the Employer and the Intervenor, that the agreement between the Intervenor and the Employer was not ratified in accordance with the method set forth in the Intervenor's Constitution. For this reason, the Petitioner contends the agreement is not valid and cannot bar a rival petition.

I have considered the evidence and the arguments presented by the parties on each of the issues. As discussed below, I have concluded that the Intervenor's Local Union Vice President was authorized to sign the agreement between the Intervenor and the Employer on behalf of the Intervenor's International Union. I have also concluded the ratification vote satisfied any contractual condition precedent of ratification in this matter. Therefore, I have determined that the agreement between the Intervenor and the Employer bars the petitions. Accordingly, I have ordered that the petitions be dismissed.

To provide a context for my discussion of the issues, I will first provide the factual background. Then, I will present in detail the facts and reasoning that supports each of my conclusions on the issues.

I. FACTUAL BACKGROUND

On July 26, 2000, at Case 6-RC-11835, the Intervenor's International Union (hereafter referred to as the International Union; similarly, the Intervenor's Local Union 502 is hereafter referred to as the Local Union or Local 502) was certified as the exclusive collective-bargaining representative for a unit of security guards employed by the Employer at Gateway Center Buildings 1, 2, 3 and 4. Thereafter, the International Union and the Employer entered into a collective-bargaining agreement which was effective by its terms from November 1, 2000 through October 31, 2003. The bargaining unit is considered to be a Unit in Local 502, which is an amalgamated local.

In anticipation of negotiations for a successor contract, International Union Vice President Kerry Lacey informed Local 502 Vice President Stephen Larkin that because of Lacey's schedule, Larkin would have to handle the negotiations. At the hearing, Lacey explained that as an International Union Vice President, he routinely delegates authority to local union officers to negotiate and administer contracts. The Employer's Senior Vice President, Paul Harris, also testified that Lacey had informed him that because of Lacey's schedule, Lacey was not sure whether it would be Lacey or Larkin negotiating the contract.

In accordance with Lacey's directive, Larkin entered into negotiations for a successor contract.[3] The parties met once in September and on October 15, 2003, with Larkin in charge of the union negotiations. The parties reached agreement on October 15, 2003, and executed a Tentative Agreement that same day. Larkin signed the Tentative Agreement as Local 502 Vice

[3] All parties are in agreement that Employer's Exhibit 3 and Petitioner's Exhibits 2 and 3 should be considered as received into evidence, and accordingly the record is amended to reflect their receipt into the record.

President beneath a designation of Local 502. Previously, on November 6, 2001, Larkin had signed another Tentative Agreement between the International Union and the Employer which modified the then operative 2000-2003 contract between the parties. In 2001, as on October 15, 2003, Larkin signed as Vice President beneath a designation of Local 502.

This October 15, 2003 Tentative Agreement recites that it is an agreement between the Employer and the International Union, recites certain modifications to the expiring contract, and states that the terms not so modified will remain in effect. Among the terms which are not modified by the Tentative Agreement is the designation of the International Union as the party to the contract. The term of the successor contract is from November 1, 2003 through October 31, 2006.

The Tentative Agreement further provides that "[i]n the event this Tentative Agreement is ratified, it shall become the final agreement between the parties." Other provisions of the Tentative Agreement also reference ratification, with the Union bargaining committee agreeing to unanimously recommend the Tentative Agreement for ratification, and the Employer agreeing to pay a ratification bonus if the agreement is ratified on the first vote.

Following the execution of the Tentative Agreement on October 15, 2003, on October 16 and October 17, 2003, the Local Union steward distributed copies of the Tentative Agreement to all unit employees,[4] and posted copies of the Tentative Agreement in the workplace. The steward also posted notices announcing a vote on the proposed contract.[5]

A ratification vote was conducted by secret ballot on October 20, 2003. The balloting took place from 7 a.m. to 9 a.m. and from 2 p.m. to 4 p.m. in the Roll Call Room. The steward,

[4] Copies of the Tentative Agreement were distributed to unit employees in the Roll Call Room during shift change.

[5] The Tentative Agreement and the notice of the vote were posted in the Roll Call Room in Building 2, and in both locker rooms of Building 2. All employees report to the Roll Call Room and all employees use the locker rooms.

who had served on the bargaining committee, conducted the vote; neither Lacey nor Larkin were present. The members voted to accepted the contract 26 to 3.[6]

The same day, the assistant steward notified the Employer that the contract was ratified, and in the October 31, 2003 paycheck the ratification bonus was paid out.

Since the October 20, 2003 ratification vote, the International Union's Executive Board has taken no action to approve the successor contract; nor has the International Union's President given interim approval to the successor contract.

On October 31, 2003, the Petitioner filed a representation petition at Case 6-RC-12281, seeking to represent a unit, as amended at the hearing, of security guards working for the Employer at Gateway Center Buildings 1, 2, 3 and 4, the same unit in which the International Union is the certified representative.[7] On November 10, 2003, the Petitioner re-filed the same petition at Case 6-RC-12285.

II. PRINCIPLES OF CONTRACT BAR

The requisites for a contract to constitute a bar to a petition are well-established in Board jurisprudence. A contract that is written, signed by the parties before a rival petition is filed, contains substantial terms and conditions of employment, and encompasses the unit involved in the petition is a bar to the rival petition. Appalachian Shale Products Co., 121 NLRB 1160 (1958).

Further, where the contract expressly requires ratification as a condition precedent to its validity, the contract does not operate as a bar absent ratification prior to the filing of the rival petition. Id.

[6] Larkin estimated that there were approximately 31 security guards employed at Gateway Center Buildings 1-4 at the time of the vote.

[7] It had been the Petitioner's intention to file this petition after the contract expired, not during the insulated period.

In this case, the parties do not dispute that the Tentative Agreement was written, signed before the rival petitions were filed, contains substantial terms and conditions of employment and covers the unit represented by the incumbent union. Rather, the disputed issues are whether the Agreement satisfied the requirement that it be signed by the parties, and whether an asserted contractual condition precedent of ratification was met.

A. Delegation of Authority

As noted, in this case, the Petitioner first argues that the Tentative Agreement does not bar its petitions because the Agreement was not signed by the International Union, which is the certified representative and the named party in the contract. In this regard, the Petitioner asserts that the testimony of Lacey, Larkin and Harris as to Lacey's delegation of authority to Larkin to negotiate and execute a contract on behalf of the International Union is not credible. In support of its assertion that the testimony is not credible, the Petitioner notes that the expired contract contains Lacey's name, although Lacey's name was actually signed by the President of the Local Union, while the Tentative Agreement recites that Larkin signed as the Local Union.

In the alternative, the Petitioner argues that Lacey's purported delegation of authority to Larkin fails in that it did not comply with the requisites for the delegation of authority as set forth in the International Union's Constitution.[8] In this regard, the Petitioner asserts that under the International Union's Constitution only the International President or the International Executive Board could delegate authority to Larkin to negotiate and execute a successor contract, and this did not occur.

The mutually corroborative, and uncontroverted testimony of Lacey, Larkin and Harris establishes that the International Union delegated authority to Larkin to negotiate and execute a

[8] The International Union Constitution states, at Article XXX, Section 3:

"No Local Union or other subordinate body, and no officer, agent, representative or member thereof shall have the power or authority to represent, act for, commit or bind the International Union in any manner except upon express authority having been granted by the International Executive Board or the International President."

successor contract, and the delegation was so understood by the Employer. This testimony further establishes that Lacey did so for legitimate reasons in conformity with the International Union's standard practice. In fact, the record shows that the previous contract between these parties was modified by an agreement between the parties, which had been executed by Larkin in the same manner as the instant agreement. Further, the record disclosed no evidence that the delegation of authority from the International Union to a Local Union officer subverted the rights of the members in any way.[9]

B. Ratification of the Contract

As noted, the Petitioner contends the Tentative Agreement does not operate as a contract bar because the contract was not ratified in the manner set forth in the Intervenor's Constitution. Asserting that the ratification vote was insufficient, the Petitioner reads the Constitution as setting forth a three-part process for ratification, that is, majority vote at "a meeting called especially for such purpose," approval by the International President pending action by the International Executive Board, and finally, approval by the International Executive Board.[10]

[9] Crothall Hospital Services, 270 NLRB 1420 (1984), relied upon by the Petitioner, is factually inapposite. In Crothall, the Memorandum of Agreement did not operate as a bar to a decertification petition because the National Union, which was identified in the preamble of the contract as a party to the contract, failed to sign the Memorandum of Agreement, even though an affiliate, District 1199C, which was the sole certified representative and a party to the contract, had signed the Memorandum of Agreement. In Crothall, unlike the present case, the National Union, a party to the contract, had not delegated authority to the affiliate to sign on behalf of the National Union and the affiliate did not purport to do so. In the instant case, however, the International Union, which is both the certified representative and the only union identified in the contract as a party to the contract, expressly delegated authority to the Local Union to negotiate and execute the Tentative Agreement on its behalf.

[10] The International Union Constitution states, at Article XIX, Section 2, in relevant part:

"No Local Union, or International Officer nor International Representative shall have the authority to execute the terms of a contract or any supplement thereof with an employer without first obtaining the approval of the Local Union or the Unit involved. Representatives of the International Union, at their option, may be present and participate fully in the negotiation of all contracts or any supplement thereof with an employer. After the Local Union or the Unit thereof involved has approved a contract by a majority of the members voting at a meeting called

The Petitioner argues that the purported ratification was inadequate because there was no special meeting, because the International President did not grant interim approval and because the International Executive Board did not approve the contract. With specific regard to the requirement of a special meeting, the Petitioner contrasts the circumstances under which the October 20, 2003 ratification vote was conducted, with a special meeting held by Larkin on October 14, 2003 to advise members of the status of negotiations.

As an initial response to the Petitioner's argument, the International Union contends that ratification is not required under the Tentative Agreement. Notwithstanding this contention, the Tentative Agreement states that "[i]n the event this Tentative Agreement is ratified, it shall become the final agreement between the parties," and obligates the Union's bargaining committee to recommend ratification and obligates the Employer to pay a ratification bonus if the contract is ratified on the first vote. Given these references, it appears that the parties intended ratification as a condition precedent to contractual validity.

When a contract requires ratification as a condition precedent to validity, but there is some ambiguity about the exact process that must be accomplished to satisfy the contractual requirement, the Board has deferred to the union's interpretation of its own procedures, unless that interpretation is unreasonable or extraordinary. Swift & Company, 213 NLRB 49, 51 (1974). In Swift, the Board cited M & M Oldsmobile Inc., 156 NLRB 903, 905 (1966), enf'd. 377 F.2d 712 (2nd Cir. 1967), an unfair labor practice case, for the proposition that "it is for the union . . . to construe and apply its internal regulations relating to what would be sufficient to amount to ratification." Id. at fn 13.

In this case, the ratification vote was conducted by a secret ballot election after the Tentative Agreement showing the proposed changes in the successor agreement had been

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especially for such purpose, it shall be referred to the International Executive Board for its recommendations, approval or rejection. In case the International President or his/her duly authorized representative recommends approval, the contract becomes operative until final action is taken by the International Executive Board."

distributed to all members and posted in the workplace and after a notice of the election had been posted in the workplace. The contract was accepted by a vote of 26 to 3, out of about 31 employees. Further, although neither Lacey nor Larkin were present, there is no showing that any member was prejudiced by the process utilized.

After the vote, the assistant steward notified the Employer that the contract was ratified. The Employer was entitled to rely on the report of the assistant steward that the contract had been ratified. As noted by the Board in Swift, supra at 51, in finding a contract bar upon such notification of ratification, the Employer was not obligated "to inquire further into . . . whether or not the reported ratification comported with all the union's internal requirements."

Moreover, the Tentative Agreement only requires ratification of the contract, not approval by the International Executive Board or the International President. Thus, the parties got exactly what they bargained for: ratification, at which time, the Agreement, by its express terms, became "final" between the parties. As Appalachian Shale Products teaches, as to ratification, it is the express terms of the contract which define what is required to establish contractual validity.

In addition, Lacey testified that the subsequent approvals are pro forma, that the International Executive Board only meets once or twice a year, and that it has never rejected the contracts presented to it.

In this case, the proposed contract was overwhelmingly ratified by the membership in a process which can be reasonably interpreted as complying with the International Union's Constitution. Pro forma approval by the International President and by the International Executive Board was not an express condition precedent to contractual validity. The International Union's interpretation of ratification does not appear "extraordinary or

unreasonable"; to the contrary, by secret ballot vote the contract was accepted 26 to 3. See Swift, supra at 51.[11]

For these reasons, I find that the Tentative Agreement bars the instant representation petitions, and therefore, the petitions shall be dismissed.

III. FINDINGS AND CONCLUSIONS

Based upon the entire record in this matter and in accordance with the discussion above, I find and conclude as follows:

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[11] The cases cited by the Petitioner do not compel a contrary conclusion.

United Health Care Services, 326 NLRB 1379 (1998), is factually inapposite, and therefore provides little guidance for the disposition of the instant case. In United Health Care, the Tentative Memorandum Agreement required ratification, but did not define the term further. In United Health Care, the rival petition was filed after acceptance of the Tentative Memorandum Agreement by the National President, but before a vote of the members. The union's usual practice was that a contract was ratified when approved by the National President, although acceptance by the members was also sought. Based on this, the contract was held to bar the rival petition.

Another case cited by the Petitioner, Childers Products Co., 276 NLRB 709 (1985), actually supports a conclusion contrary to Petitioner's position. Childers is an unfair labor practice case in which the Memorandum of Agreement reached by the parties stated "This Agreement Subject To Ratification." Id. at 710. The Petitioner cited Childers for the general proposition that "[t]he condition precedent of 'ratification' means ratification as defined by the Union in its internal procedures." Id. at 711. More specifically, however, Childers illustrates the deference accorded to a union's reasonable interpretation of its constitution and by-laws.

In Childers, the union's constitution and by-laws provided that "[c]ontracts may be accepted and ratified by a majority vote of the affected members present and voting on such issues." Id. at 710. In addition, it was the union's standard practice to present the contract to the membership for a vote. However, in that case, no employees attended the meeting called to vote on the contract.

Faced with the novel situation where no employees attended the ratification meeting, the union in Childers presented the contract to its executive committee, which accepted it. In Childers, the union's constitution and by-laws provided that if the membership did not accept the employer's last offer, but refused to authorize a strike, the union's executive board had the authority to accept the contract. While this provision, by its terms, did not apply to the ratification of contracts, nonetheless, the union's application of this provision was upheld by the Board as a reasonable interpretation of its internal processes and the Employer was found to have violated Section 8(a)(1) and (5) of the Act by refusing to execute and abide by the ratified agreement.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter.
3. The Petitioner and the Intervenor claim to represent certain employees of the Employer.
4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

IV. ORDER

IT IS HEREBY ORDERED that the petitions filed herein be, and they hereby are, dismissed.

V. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST (EDT), on **January 2, 2004**. The request may **not** be filed by facsimile.

Dated: December 18, 2003

/s/ Gerald Kobell
Gerald Kobell, Regional Director

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Classification Index
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